



COMMONWEALTH of VIRGINIA

Dianne L. Reynolds-Cane, M.D.
Director

Department of Health Professions
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367-4400
FAX (804) 527-4475

Virginia Board of Dentistry

Work Group on Advertising August 20, 2010

Agenda

10:00 am

Call to Order -- Dr. Boyd

Introduction of members

Goal of Work Group: **Review the regulations and statutes concerning advertising related to dentistry in Virginia**

Purpose of Work Group: **Report to the Board any suggestions to strengthen the understanding and working of the regulations and statutes and possibly lessen the confusion that exists surrounding advertising and dentistry.**

Discussion: **Existing regulations and statutes, guidance document and court case**

Results, suggestions, recommendations to be reported back to the Board

2:00 pm

Adjournment

§ 54.1-2401. Monetary penalty.

Any person licensed, registered or certified or issued a multistate licensure privilege by any health regulatory board who violates any provision of statute or regulation pertaining to that board and who is not criminally prosecuted, may be subject to the monetary penalty provided in this section. If the board or any special conference committee determines that a respondent has violated any provision of statute or regulation pertaining to the board, it shall determine the amount of any monetary penalty to be imposed for the violation, which shall not exceed \$5,000 for each violation. The penalty may be sued for and recovered in the name of the Commonwealth. All such monetary penalties shall be deposited in the Literary Fund.

(1980, c. 678, § 54-961; 1988, c. 765; 1992, c. 659; 1997, c. 564; 2003, cc. 753, 762; 2004, c. 49.)

§ 54.1-2402. Citizen members on health regulatory boards.

Citizen members appointed to boards within the Department of Health Professions after July 1, 1986, shall participate in all matters. Of the citizen members first appointed to boards with two citizen members, one shall be appointed for a term of two years and one for the maximum term established for members of the respective board. On boards with one citizen member, the citizen member initially appointed shall be appointed for the maximum term established for members of that board. The provisions of this section relating to terms of citizen members on such boards shall not apply to the Board of Medicine or to the Board of Funeral Directors and Embalmers. For the purposes of this section, "citizen member" shall have the meaning provided in § 54.1-107.

(1986, c. 464, § 54-950.3; 1988, cc. 66, 765.)

§ 54.1-2402.1. Appointments, removals, and limitation of terms of members of regulatory boards.

Except as otherwise expressly provided, members shall be appointed by the Governor and may be removed by him as provided in subsection B of § 2.2-108. Any vacancy occurring other than by expiration of term shall be filled for the unexpired term. Members shall hold office after expiration of their terms until their successors are duly appointed and have qualified.

All members of regulatory boards appointed by the Governor for terms commencing on or after July 1, 1988, shall be appointed for terms of four years. No members shall serve more than two successive full terms on any regulatory board.

(1988, c. 42, § 54-950.4.)

§ 54.1-2403. Certain advertising prohibited.

No person licensed by one of the boards within the Department shall use any form of advertising that contains any false, fraudulent, misleading or deceptive statement or claim.

§ 54.1-2704. Nominations.

Nominations may be made for each professional vacancy from a list of three names submitted to the Governor by the Virginia Dental Association, the Old Dominion State Dental Society, the Virginia Dental Hygienists' Association, and the Commonwealth Dental Hygienists' Society. Further, any licensee of this chapter may submit nominations to the Governor. The Governor shall not be bound to make any appointment from among the nominees.

(Code 1950, § 54-156; 1972, c. 805; 1977, c. 669; 1986, c. 464; 1988, c. 765; 2005, cc. 505, 587.)

§ 54.1-2705. Investigation of applicant for license.

The Board shall investigate the qualifications and truthfulness on registration of any applicant for a license to practice dentistry or dental hygiene, and for such purposes shall have power to send for witnesses, papers and documents, and administer oaths. The cost of such inquiry shall be borne by the applicant.

(Code 1950, § 54-176; 1972, c. 805; 1975, c. 479; 1988, c. 765.)

§ 54.1-2706. Revocation or suspension; other sanctions.

The Board may refuse to admit a candidate to any examination, refuse to issue a license to any applicant, suspend for a stated period or indefinitely, or revoke any license or censure or reprimand any licensee or place him on probation for such time as it may designate for any of the following causes:

1. Fraud, deceit or misrepresentation in obtaining a license;
2. The conviction of any felony or the conviction of any crime involving moral turpitude;
3. Use of alcohol or drugs to the extent that such use renders him unsafe to practice dentistry or dental hygiene;
4. Any unprofessional conduct likely to defraud or to deceive the public or patients;
5. Intentional or negligent conduct in the practice of dentistry or dental hygiene which causes or is likely to cause injury to a patient or patients;
6. Employing or assisting persons whom he knew or had reason to believe were unlicensed to practice dentistry or dental hygiene;
7. Publishing or causing to be published in any manner an advertisement relating to his professional practice which (i) is false, deceptive or misleading, (ii) contains a claim of superiority, or (iii) violates regulations promulgated by the Board governing advertising;

8. Mental or physical incompetence to practice his profession with safety to his patients and the public;

9. Violating, assisting, or inducing others to violate any provision of this chapter or any Board regulation;

10. Conducting his practice in a manner contrary to the standards of ethics of dentistry or dental hygiene;

11. Practicing or causing others to practice in a manner as to be a danger to the health and welfare of his patients or to the public;

12. Practicing outside the scope of the dentist's or dental hygienist's education, training, and experience;

13. Performing a procedure subject to certification without such valid certification required by the Board pursuant to § 54.1-2709.1 and Board regulations; however, procedures performed pursuant to the provisions of subdivision 5 of § 54.1-2712 as part of an American Dental Association accredited residency program shall not require such certification;

14. The revocation, suspension or restriction of a license to practice dentistry or dental hygiene in another state, possession or territory of the United States or foreign country; or

15. The violation of any provision of a state or federal law or regulation relating to manufacturing, distributing, dispensing or administering drugs.

(Code 1950, § 54-187; 1962, c. 45; 1972, c. 805; 1973, c. 391; 1975, c. 479; 1978, cc. 247, 248; 1984, c. 28; 1988, c. 765; 2001, c. 662; 2004, c. 64; 2005, cc. 505, 587.)

§ 54.1-2707.

Reserved.

§ 54.1-2708. Disciplinary action discretion.

Except in the case of a monetary penalty, the Board may take disciplinary action notwithstanding any action pending before or consummated before any court or any criminal penalty which has been or may be imposed.

(1972, c. 805, § 54-189.1; 1975, c. 479; 1978, c. 248; 1988, cc. 64; 765; 1997, c. 556.)

§ 54.1-2708.1.

Repealed by Acts 1997, c. 698.

§ 54.1-2708.2. Recovery of monitoring costs.

C. Dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A.

(Code 1950, § 54-152; 1968, c. 604; 1970, c. 639; 1972, c. 805; 1975, c. 479; 1976, c. 327; 1985, c. 373; 1988, c. 765; 2002, c. 549; 2004, c. 48; 2005, cc. 505, 587; 2006, c. 176; 2009, cc. 813, 840.)

§ 54.1-2716. Practicing in a commercial or mercantile establishment.

It shall be unlawful for any dentist to practice his profession in a commercial or mercantile establishment, or to advertise, either in person or through any commercial or mercantile establishment, that he is a licensed practitioner and is practicing or will practice dentistry in such commercial or mercantile establishment. This section shall not prohibit the rendering of professional services to the officers and employees of any person, firm or corporation by a dentist, whether or not the compensation for such service is paid by the officers and employees, or by the employer, or jointly by all or any of them. Any dentist who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

For the purposes of this section, the term "commercial or mercantile establishment" means a business enterprise engaged in the selling of commodities or services unrelated to the practice of dentistry or the other healing arts.

(Code 1950, § 54-147.1; 1988, c. 765.)

§ 54.1-2717. Practice of dentistry by professional business entities.

A. No corporation shall be formed or foreign corporation domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional corporation as permitted by Chapter 7 (§ 13.1-542 et seq.) of Title 13.1.

B. No limited liability company shall be organized or foreign limited liability company domesticated in the Commonwealth for the purpose of practicing dentistry other than a professional limited liability company as permitted by Chapter 13 (§ 13.1-1100 et seq.) of Title 13.1.

C. Notwithstanding the provisions of subsections A and B, dentists licensed pursuant to this chapter may practice as employees of the dental clinics operated as specified in subsection A of § 54.1-2715.

(Code 1950, § 54-183; 1988, c. 765; 1992, c. 574; 2004, c. 48.)

§ 54.1-2718. Practicing under firm or assumed name.

A. No person shall practice, offer to practice, or hold himself out as practicing dentistry, under a name other than his own. This section shall not prohibit the practice of dentistry by a partnership under a firm name, or a licensed dentist from practicing dentistry as the employee of a licensed

dentist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company or as the employee of a dental clinic operated as specified in subsection A of § 54.1-2715.

B. A dentist, partnership, professional corporation, or professional limited liability company that owns a dental practice may adopt a trade name for that practice so long as the trade name meets the following requirements:

1. The trade name incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location; (ii) type of practice; or (iii) a derivative of the dentist's name.
2. Derivatives of American Dental Association approved specialty board certifications may be used to describe the type of practice if one or more dentists in the practice are certified in the specialty or if the specialty name is accompanied by the conspicuous disclosure that services are provided by a general dentist in every advertising medium in which the trade name is used.
3. The trade name is used in conjunction with either (i) the name of the dentist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the trade name used for the practice in all advertisements in any medium.
4. Marquee signage, web page addresses, and email addresses are not considered to be advertisements and may be limited to the trade name adopted for the practice.

(Code 1950, § 54-184; 1970, c. 639; 1975, c. 479; 1988, c. 765; 1992, c. 574; 2004, c. 48; 2005, cc. 505, 587.)

§ 54.1-2719. Persons engaged in construction and repair of appliances.

A. Licensed dentists may employ or engage the services of any person, firm or corporation to construct or repair, extraorally, prosthetic dentures, bridges, or other replacements for a part of a tooth, a tooth, or teeth. A person, firm or corporation so employed or engaged shall not be considered to be practicing dentistry. No such person, firm or corporation shall perform any direct dental service for a patient, but they may assist a dentist in the selection of shades for the matching of prosthetic devices when the dentist sends the patient to them with a written work order.

B. Any licensed dentist who employs the services of any person, firm or corporation not working in a dental office under his direct supervision to construct or repair, extraorally, prosthetic dentures, bridges, replacements, or orthodontic appliances for a part of a tooth, a tooth, or teeth, shall furnish such person, firm or corporation with a written work order on forms prescribed by the Board which shall, at minimum, contain: (i) the name and address of the person, firm or corporation; (ii) the patient's name or initials or an identification number; (iii) the date the work order was written; (iv) a description of the work to be done, including diagrams, if necessary; (v)

Part I. General Provisions.

18VAC60-20-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale or use of dental methods, services, treatments, operations, procedures or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures or products.

"Analgesia" means the diminution or elimination of pain in the conscious patient.

"Anxiolysis" means the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness.

"Conscious sedation" means a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal commands, produced by pharmacological or nonpharmacological methods, including inhalation, parenteral, transdermal or enteral, or a combination thereof.

"Deep sedation/general anesthesia" means an induced state of depressed consciousness or unconsciousness accompanied by a complete or partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to physical stimulation or verbal command and is produced by a pharmacological or nonpharmacological method or a combination thereof.

"Dental assistant" means any unlicensed person under the supervision of a dentist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely a secretarial or clerical capacity.

"Direction" means the dentist examines the patient and is present for observation, advice, and control over the performance of dental services.

"Enteral" is any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).

"General supervision" means that the dentist has examined the patient and issued a written order for the specific, authorized services to be provided by a dental hygienist when the dentist is not present in the facility while the services are being provided.

2. Performing services for a patient under terms or conditions which are unconscionable. The board shall not consider terms unconscionable where there has been a full and fair disclosure of all terms and where the patient entered the agreement without fraud or duress;
3. Misrepresenting to a patient and the public the materials or methods and techniques the licensee uses or intends to use;
4. Committing any act in violation of the Code of Virginia reasonably related to the practice of dentistry and dental hygiene;
5. Delegating any service or operation which requires the professional competence of a dentist or dental hygienist to any person who is not a dentist or dental hygienist as authorized by this chapter;
6. Certifying completion of a dental procedure that has not actually been completed;
7. Knowingly or negligently violating any applicable statute or regulation governing ionizing radiation in the Commonwealth of Virginia, including, but not limited to, current regulations promulgated by the Virginia Department of Health; and
8. Permitting or condoning the placement or exposure of dental x-ray film by an unlicensed person, except where the unlicensed person has complied with 18VAC60-20-195.

18VAC60-20-180. Advertising.

A. Practice limitation. A general dentist who limits his practice shall state in conjunction with his name that he is a general dentist providing only certain services, e.g., orthodontic services.

B. Fee disclosures. Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products which, to a substantial likelihood, will be necessary for the completion of the advertised services as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of fees for specifically described dental services shall not be deemed to be deceptive or misleading.

C. Discounts. Discount offers for a dental service are permissible for advertising only when the nondiscounted or full fee and the final discounted fee are also disclosed in the advertisement. The dentist shall maintain documented evidence to substantiate the discounted fee.

D. Retention of broadcast advertising. A prerecorded copy of all advertisements on radio or television shall be retained for a six-month period following the final appearance of the advertisement. The advertising dentist is responsible for making prerecorded copies of the advertisement available to the board within five days following a request by the board.

E. Routine dental services. Advertising of fees pursuant to subdivision F 3 of this section is limited to procedures which are determined by the board to be routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature," as published in Current Dental Terminology (CDT-2007/2008), which is hereby adopted and incorporated by reference.

F. The following practices shall constitute false, deceptive, or misleading advertising within the meaning of §54.1-2706 (7) of the Code of Virginia:

1. Publishing an advertisement which contains a material misrepresentation or omission of facts;
2. Publishing an advertisement which contains a representation or implication that is likely to cause an ordinarily prudent person to misunderstand or be deceived, or that fails to contain reasonable warnings or disclaimers necessary to make a representation or implication not deceptive;
3. Publishing an advertisement which fails to include the information and disclaimers required by this section;
4. Publishing an advertisement which contains a claim of professional superiority, claims to be a specialist, or uses any of the terms to designate a dental specialty unless he is entitled to such specialty designation under the guidelines or requirements for specialties approved by the American Dental Association (Requirements for Recognition of Dental Specialties and National Certifying Boards for Dental Specialists, October 1995), or such guidelines or requirements as subsequently amended and approved by the dental disciplinary board, or other such organization recognized by the board; and
5. A dentist not currently entitled to such specialty designation shall not represent that his practice is limited to providing services in a specialty area without clearly disclosing in the representation that he is a general dentist. A specialist who represents services in areas other than his specialty is considered to be practicing general dentistry.

G. Signage. Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with.

Part VI. Direction and Delegation Of Duties.

18VAC60-20-190. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;
2. Performing surgical or cutting procedures on hard or soft tissue;
3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-20-81, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;
4. Authorization of work orders for any appliance or prosthetic device or restoration to be inserted into a patient's mouth;
5. Operation of high speed rotary instruments in the mouth;
6. Performing pulp capping procedures;
7. Administering and monitoring general anesthetics and conscious sedation except as provided for in § 54.1-2701 of the Code of Virginia and 18VAC60-20-108 C, 18VAC60-20-110 F, and 18VAC60-20-120 F;

Virginia Board of Dentistry
Board Meeting
March 3, 2006

Invitation from Dr. Link, D.D.S.: Ms. Reen noted that Dr. Link is inviting Board members to attend the VDA Task Force meeting on March 31, 2006 to hear presentations by ADEX and WREB. Dr. Gokli stated that she and Dr. Young are on the Task Force. Ms. Reen noted that DHP discourages members serving on groups that are addressing matters that may come before the Board. Mr. Casway explained that, unless the Board asked the member to serve as its representative, participation could be perceived as a conflict or as improper conduct.


**BOARD COUNSEL
REPORT:**

Litigation: Mr. Casway asked the Board to enter into a closed meeting to discuss matters pertaining to the pending litigation with Drs. Kirksey, Lennon, Petka, and Coleman.

Closed Meeting: On a properly seconded motion by Dr. Zimmet, the Board entered into a closed meeting pursuant to § 2.2-3711(a)(7) of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, it was moved that Board counsel, Howard Casway, and Board staff, Sandra Reen, Patricia Larimer and Cheri Emma-Leigh attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

Reconvene: On a properly seconded motion by Dr. Zimmet, the Board agreed that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board.

By motion by Dr. Zimmet, Mr. Casway was authorized to negotiate a settlement by consent order of the litigation brought by Dr. Kirksey.



Advertising: Ms. Reen noted that the Board had deferred action on three letters about advertising until it had discussed the pending litigation about advertising. The Board took the following actions on the letters:

- Adopted a motion by Dr. Zimmet to advise Dr. Supan that the use of "certified" is acceptable so long as its use is truthful.
- Adopted a motion by Dr. Gokli to advise Dr. Martin that naming his practice "Richmond Smile Center" is acceptable.
- Adopted a motion by Dr. Snyder to advise Dr. Callahan that the

**Virginia Board of Dentistry
Board Meeting
March 3, 2006**

two advertisements he asked about in regards to claims of superiority were acceptable so long as his assertions about the contents of the advertisements were truthful.

The lack of public concern with advertising issues, the variety of advertisements in the Yellow Pages and the confusion that exists among dentists about acceptable practices was discussed. Dr. Watkins requested that the Board consider making changes to the laws and regulations regarding advertising. Dr. Seigel referred this matter to the Legislative/Regulatory Committee.

Ms. Reen was asked how the Board might limit the amount of time being spent on advertising cases. She suggested that all advertising complaints moving forward after probable cause review should go to an agency subordinate. In addition, she suggested having the Intake Analyst submit all advertising complaints for review by the Board before they are investigated to see if the allegation is made with enough substance to determine if the advertising is actually false, deceptive or misleading. She noted that these would be off-line cases which the President of the Board reviews. Dr. Snyder moved to implement these changes immediately. The motion passed.

Substance Abuse Training: Mr. Casway gave a brief overview of his Power Point presentation on the Disclosure of Substance Abuse Treatment Information in Notices and Orders. He stated that if information obtained by the Department is accompanied by the written statement set forth in 42 C.F.R. § 2.32, then the substance abuse regulations' prohibitions on disclosure are applicable. Allegations and findings of fact can disclose information about substance abuse treatment if the respondent, as opposed to the treatment records, is the source of the information.

**EXECUTIVE
DIRECTOR'S REPORT:**

Newsletter: Ms. Reen stated that she has at Dr. Seigel's urging begun work on the newsletter. Ms. Emma-Leigh has staff preparing the disciplinary case listing for the period beginning January 2002 through December 2005. Dr. Watkins asked if the disciplinary information could just be posted on the website. Ms. Reen stated that the Board had moved in a previous Board meeting to list all disciplinary cases in the newsletter by names and sanctions. She also reported that the Board Of Medicine was posting its newsletters on their webpage and sending out

Virginia Board of Dentistry

Policy on Sanctioning for Failure to Comply with Advertising Guidelines

Excerpts of Applicable Law, Regulation and Guidance 18VAC60-20-180 et seq.

- The Board may sanction any licensee for advertisements that are false, deceptive or misleading; contain a claim of superiority or violate regulations, §54.1-2706(7).
- A general dentist who limits his practice shall advertise that he is a general dentist providing only certain services, 18VAC60-20-180.A.
- Any statement specifying a fee for a dental service which does not include the cost of all related procedures, services, and products shall be deemed to be deceptive or misleading, 18VAC60-20-180.B
- Discount offers for dental services shall include the nondiscounted fee and the discounted fee, 18VAC60-20-180.C
- A prerecorded copy of all advertisements on radio or television shall be retained for six-months following the final appearance of the advertisement, 18VAC60-20-180.D
- Advertising of fees is limited to only routine dental services as set forth in the American Dental Association's "Code on Dental Procedures and Nomenclature." 18VAC60-20-180.E
- The following practices shall constitute false, deceptive, or misleading advertising: §54.1-2706(7); 18VAC60-20-180.F
- Publishing an advertisement which contains a material misrepresentation or omission of facts, 18VAC60-20-180.F.1
- Publishing an advertisement that is likely to cause an ordinarily prudent person to be deceived, 18VAC60-20-180.F.2
- Publishing an advertisement which fails to include the information and disclaimers required by this section, 18VAC60-20-180.F.3
- Publishing an advertisement which contains a claim of professional superiority or uses any term to designate a dental specialty to which he is not entitled, 18VAC60-20-180.F.4
- A dentist not entitled to a specialty designation shall not represent that his practice is limited to providing services in a specialty area without disclosing that he is a general dentist, 18VAC60-20-180.F.5
- Advertisements, including but not limited to signage, containing descriptions of the type of dentistry practiced or a specific geographic locator are permissible so long as the requirements of §§54.1-2718 and 54.1-2720 of the Code of Virginia are complied with, 18VAC60-20-180.G
- Confidential Consent Agreements may be used to address advertising guidelines, Guidance Document 60-1.

Making a Probable Cause Decision

1. In regards to allegations of false, deceptive and misleading advertisements, the reviewing Board member or staff (the reviewer) shall consider whether evidence exists that the source of the complaint was actually deceived, misled, etc. Anonymous complaints and allegations that something could be a violation generally do not provide the required clear and convincing evidence that a violation occurred.

2. In regards to allegations of claims of superiority and the failure to disclose required information, the reviewer shall not only consider the content of the advertisement but the evidence collected about the development and publication of the advertisement in deciding if there is clear and convincing evidence that the licensee is the responsible party and there is probable cause to believe a violation occurred.

A. Guidelines for sending an Advisory Letter

1. The reviewer shall only request an Advisory Letter when there is not clear and convincing evidence to support a finding that a violation of law or regulation has occurred.
2. Advisory letters may be used to close cases when the reviewer is concerned that the presenting information indicates that the licensee may be acting in ignorance of the applicable law and regulations.

B. Guidelines for Offering a Confidential Consent Agreement

1. The reviewer shall offer a CCA for a first advertising offense and may offer a CCA for subsequent advertising violations.
2. In cases where there are findings of probable cause for violations in addition to advertising, the reviewer may offer a CCA consistent with Guidance Document 60-1.
3. The offered CCA shall include a finding that a violation occurred and shall request the licensee's agreement to cease and desist advertising in violation of law and regulations.
4. The offered CCA may also include a requirement for passage of the Virginia Dental Law Exam or completion of a continuing education course in ethics.

C. Guidelines for Imposing Disciplinary Sanctions

- a. The reviewer may offer a Pre-Hearing Consent Order (PHCO) or request an informal fact finding conference when probable cause is found that the licensee has subsequent advertising violations.
- b. The reviewer shall consider the following sanctioning guidelines:
 - a. a \$1,000 monetary penalty and successful completion of the Virginia Dental Law Exam for a second offense.
 - b. a \$2,000 monetary penalty and continuing education in ethics for a third offense.
- c. In cases where there are findings of probable cause for violations in addition to advertising the reviewer may offer a PHCO or request an informal fact finding conference.

VIRGINIA:

BEFORE THE BOARD OF DENTISTRY

IN RE: KIMBERLY CERTA, D.D.S.
License No. 0401-006699
Case No. 72536

ORDER

Pursuant to § 9-6.14:11 and § 54.1-2400(10) of the Code of Virginia (1950), as amended ("Code"), a Special Conference Committee of the Board of Dentistry ("Committee"), composed of Gary E. Taylor, D.D.S., Gopal S. Pal, D.D.S., and Stephany P. Olenic, R.D.H., met on March 17, 2000, in Henrico County, Virginia, to receive and act upon evidence that Kimberly Certa, D.D.S., may have violated certain laws and regulations governing the practice of dentistry in Virginia. Dr. Certa was not present and was not represented by counsel. Upon consideration of the evidence presented, the Committee adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Kimberly Certa, D.D.S., holds License No. 0401-006699 issued by the Virginia Board of Dentistry.
2. By letter dated March 14, 2000, Robert J. Zelnick, Esquire, counsel for Dr. Certa, advised the Board that Dr. Certa was waiving her right to the informal conference scheduled for March 17, 2000 and would not be attending. Mr. Zelnick further stated that "this waiver does not constitute an admission that Dr. Certa has violated any of the laws and regulations governing the practice of dentistry in the Commonwealth of Virginia, and she reserves all claims and defenses to the allegations against her."

3. Dr. Certa caused to be placed at her office located at 2946-E Chain Bridge Road, Hunter Mill Plaza, Oakton, Virginia, signage wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Softouch Dental Care."
4. Dr. Certa caused to be published in the 1999 Bell Atlantic Yellow Pages for the Northern Virginia area, Virginia, an advertisement wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Soft Touch Dental."
5. Dr. Certa caused stationary, billing statements and business cards to be printed wherein she practices, offers to practice, or holds herself out as practicing under a name other than her own: "Softouch Dental Care" and "Softouch Dental Care of Oakton."

CONCLUSIONS OF LAW

Based upon Findings of Fact #3 through #5, the Committee concludes that Kimberly Certa, D.D.S., has violated § 54.1-2706(A)(7)(iii) and (9), and § 54.1-2718 of the Code and 18 VAC 60-20-180(G) of the Board of Dentistry Regulations.

ORDER

On the basis of the foregoing, the Committee, effective upon entry of this Order, hereby ORDERS that Kimberly Certa, D.D.S., be and hereby CEASE AND DESIST from practicing, offering to practice or holding herself out to practice under a name other than her own. No later than ninety (90) days from the date this Order becomes final, Dr. Certa shall submit proof to the Board that she is in compliance with all laws and Board regulations and Orders regarding trade names and how she holds herself and her practice to the public. Proof of compliance with all laws and Board regulations shall include, but not be limited to, correspondence requesting changes to telephone directory listings to Bell Atlantic and any other telephone directory company which lists Dr. Certa's practice of


K. Certa

dentistry under any name other than her own; copies of new stationery, billing statements and business cards; and pictures of the signage at her office either removed or changed. In the event Dr. Certa fails to comply with this Order within ninety (90) days from the date this Order becomes final, further administrative proceedings shall be convened.

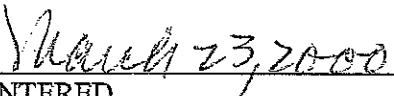
Pursuant to § 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

If Dr. Certa does not consent to the Committee's decision and desires a hearing before the Board or a panel thereof, she shall notify, in writing, Marcia J. Miller, Executive Director, Board of Dentistry, 6606 W. Broad Street, Fourth Floor, Richmond, Virginia 23230-1717 within thirty-three (33) days from the date of entry of this Order. This Order shall become final upon the expiration of the thirty-three day period unless a written request for a formal hearing is received within such time. Upon receiving timely request for a hearing, the Board or panel thereof shall then proceed with a hearing as provided in § 9-6.14:12 of the Code.

FOR THE COMMITTEE



Marcia J. Miller
Executive Director, Board of Dentistry

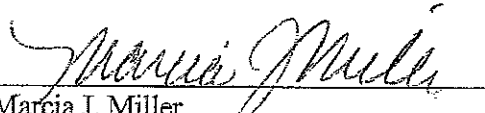


ENTERED

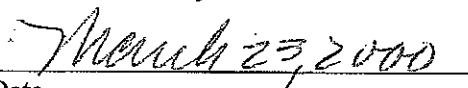
K. Certa

Certificate of Service

I hereby certify that a certified true copy of the foregoing Order was mailed on this day to Kimberly Certa, D.D.S., at 2946-E Chain Bridge Road, Hunter Mill Plaza, Oakton, Virginia 22124, and to Robert J. Zelnick, Esquire, Szabo, Zelnick & Erickson, P.C., Lake Ridge Executive Park, 12610 Lake Ridge Drive, Woodbridge, Virginia 22192.



Marcia J. Miller
Executive Director for the
Board of Dentistry



Date

VIRGINIA:

BEFORE THE BOARD OF DENTISTRY

IN RE: KIMBERLY CERTA, D.D.S.

License No. 0401-006699

Case No. 72536

ORDER

COMES NOW the Board of Dentistry (the "Board") following entry of an Order in the United States District Court for the Eastern District of Virginia dismissing by agreement the matter styled Kimberly Certa, D.D.S. v. Monroe E. Harris, Jr., D.M.D., et al., Civil Action No. 00-1948-A. As part of the Settlement Agreement, parties agreed that the pending administrative proceeding as set forth in the Notice of Hearing and Statement of Particulars mailed to Dr. Certa on March 8, 2001, involving allegations that Certa's practice of dentistry under the trade name "Softouch Dental Care" violated certain statutes and regulations involving the practice of dentistry in the Commonwealth of Virginia would be dismissed with prejudice in accordance with the terms of the Settlement Agreement as incorporated in the Final Order entered by the United States District Court. Said documents are incorporated by reference hereto.

WHEREAS, on the basis of the foregoing and effective upon entry of this Order, the notice of formal hearing originally mailed on March 8, 2001 is withdrawn and Case No. 72536 is DISMISSED with prejudice.

Pursuant to § 9-6.14:14 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD

Sandra K. Reen
Sandra K. Reen
Executive Director
Board of Dentistry

2-28-02
Date

Certificate of Service

I hereby certify that a certified true copy of the foregoing Order was mailed on this day to Robert J. Zelnick, Esquire, 12610 Lake Ridge Drive, Woodbridge, Virginia 22192, this 28th day of February, 2002

Sandra K. Reen
Sandra K. Reen
Executive Director for the
Board of Dentistry

2-28-02
Date

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

KIMBERLY CERTA, D.D.S.

Plaintiff

v.

CIVIL ACTION NO. 00-1948-A

MONROE E. HARRIS, JR., D.M.D., et.al.

Defendants

AGREED FINAL ORDER

This day came the parties and represented to the Court that all issues herein have been resolved by agreement, including the claims of both parties for attorneys' fees and costs, as reflected in the Settlement Agreement attached hereto..

Upon consideration whereof, it is hereby ORDERED, ADJUDGED and DECREED that the attached Settlement Agreement is approved, ratified and incorporated into this Final Order, and this case is dismissed with prejudice as settled and is stricken from the Court's docket. Let the Clerk send a copy of this Order to all counsel of record.

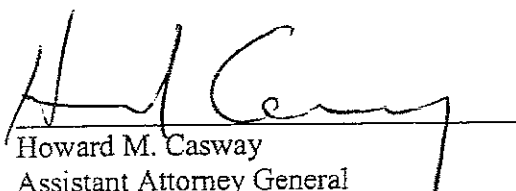
ENTERED: / /

By: _____
United States District Judge

SEEN AND AGREED:

Robert J. Zelnick
Szabo, Zelnick & Erickson, P.C.
12610 Lake Ridge Drive
Woodbridge, VA 22192
Ph: (703) 494-7171
Fax: (703) 643-2666
Counsel for Plaintiff

SEEN AND AGREED:



Howard M. Casway
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Ph: (804)
Fax: (804) 371-8718
Counsel for Defendants

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
(Alexandria Division)**

KIMBERLY CERTA, D.D.S.

Plaintiff

v.

CIVIL ACTION NO. 00-1948-A

MONROE E. HARRIS, JR., D.M.D., et.al.

Defendants

SETTLEMENT AGREEMENT

In order to resolve their respective claims and to avoid the further time and expense of litigation, plaintiff Kimberly Certa, D.D.S. and defendants, Monroe E. Harris, Jr., D.M.D., et.al (collectively "the parties") hereby agree to the following:

1. That the plaintiff, Kimberly Certa, is a licensed Virginia dentist who practices under the trade name "Softouch Dental Care"; that the defendants are the duly appointed members of the Virginia Board of Dentistry whose duty it is to enforce the statutes and regulations governing the practice of dentistry in the Commonwealth of Virginia; and that the defendants previously informed the plaintiff that her use of the name "Softouch Dental Care" is a violation of the applicable statutes and regulations of the Board of Dentistry and ordered her to cease and desist from using said trade name and commenced administrative proceedings to enforce the statutes and regulations governing the practice of dentistry in the Commonwealth of Virginia.

2. That the defendants agree to dismiss the pending administrative proceedings with prejudice and not to initiate any future administrative proceedings arising out of the plaintiff's use of the trade name, "Softouch Dental Care". The defendants agree further not to contest in

any subsequent administrative or judicial proceeding, plaintiff's claim that her use of the trade name "Softouch Dental Care" is commercial speech entitled to constitutional protection under the First Amendment to the United States Constitution and that her use of the name "Softouch Dental Care" while merely promotional, is deemed to be a permissible use under the Virginia Code and regulations of the Board of Dentistry.

3. That the plaintiff will be permitted to practice dentistry in the Commonwealth of Virginia, so long as she is properly licensed, under the trade name "Softouch Dental Care", and that the defendants agree not to contest in any judicial or administrative proceeding her subsequent use of said trade name and agree, that its use does not violate Virginia Code §§ 54.1-2706(A)(7), 54.1-2706(A)(9) and 54.1-2718 and/or the regulations of the Virginia Board of Dentistry, including but not limited to 18 VAC60-20-180(F) and (G).

4. That the plaintiff will also be permitted to use the slogan "practicing dentistry with a soft touch" and that the use of such slogan will not be deemed to violate the aforesaid statutes or regulations.

5. That the Board of Dentistry, on behalf of the defendants, shall pay to Robert J. Zelnick, as plaintiff's counsel, the sum of \$12,000.00 as reasonable attorneys' fees and costs expended by the plaintiff in this litigation.

6. Provisions of this settlement agreement shall be enforceable by filing an appropriate complaint in the United States District Court for the Eastern District of Virginia, Alexandria Division.

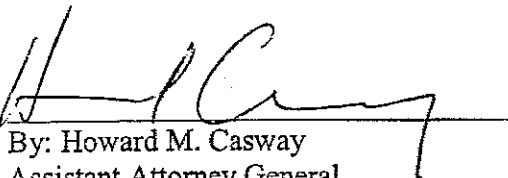
7. The parties agree to the dismissal of this case with prejudice as settled. The parties further agree that this Settlement Agreement shall be approved, ratified and incorporated into the Agreed Final Order dismissing the case.

8. This agreement is binding on the parties hereto and their successors.
9. Nothing in this agreement shall constitute an admission of liability by any party.
10. The undersigned represent that they have the authority to enter in to this agreement and that they have read and understand its terms.

FOR THE PLAINTIFF:
Kimberly Certa, D.D.S.

Kimberly Certa, D.D.S.

FOR THE DEFENDANTS:
Monroe E. Harris, Jr., D.M.D., ET AL



By: Howard M. Casway
Assistant Attorney General
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
Counsel for Defendants

H:/hess/hmc/bod/certa/settlementAgreementrev'd5.doc